

Testimony of
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Chairman Campbell, Vice Chairman Inouye, and other distinguished members of the Committee, on behalf of the Members of the National American Indian Housing Council and its Board of Directors, thank you for this opportunity to address you today on S.519, the Native American Capital Formation and Economic Development Act of 2003. My name is Chester Carl, and in addition to being the Chairman of the National American Indian Housing Council, I am also the CEO of the Navajo Housing Authority. For my testimony today, I rely not only on my own experiences in tribal housing and in business, but on what I have learned from colleagues who have spent years working on tribal development issues.

Across this country, thousands of Native families are facing housing conditions similar to those in undeveloped countries. Compared to most American homes, many tribal homes lack proper sewage and water systems, adequate roads, telephone lines, indoor plumbing and electricity. The problem is exacerbated by the remote or rural locations of tribes, many of which have few, if any, economic opportunities. As the mainstream American economy progressed, development did not extend to Native communities, in part because of land jurisdiction, but for many other reasons as well, including federal policy. So we find ourselves in the situation we are in today – seeking ways to help tribes take advantage of the private market and develop their economies without relying solely on federal subsidy or gaming.

I understand that the Committee's purpose in this hearing is to evaluate the creation of a tribally-owned development corporation that could assist in developing tribal economies. I have learned through my work with the Navajo Nation and in my long career as a businessman that the key to economic success is to utilize the tools that are proven to work to build capital and take advantage of them in the ways that other successful businesses do. Although tribes are unique in their structure and culture, I believe a solution to

economic challenges will come only through sound investment and business practices that integrate tribal economies with the greater financial community. Capital growth through a development corporation has the potential to stimulate tribal economies in ways that could lead to less reliance on the federal government.

Some of this committee's staff accompanied NAIHC on an Indian housing tour to the Northwest in the spring of 2002. One of the tribes visited was the Hoh Tribe, which, with approximately 100 members and a 1 mile square reservation, receives about \$150,000.00 in NAHASDA funds from HUD each year, administered through an umbrella TDHE (Tribally Designated Housing Entity). It became obvious to all on the tour that, unlike in most of America, investing housing funds in this community was not resulting in economic stimulus because of its 80% unemployment rate and isolation from any sort of business or economic structure. Housing dollars were going strictly into building desperately needed homes, but with so much unemployment and with everything so heavily subsidized, the tribe was making little progress in improving their economic situation. Despite the tribe's efforts, it was difficult to imagine a time when the Hoh Tribe would no longer need federal housing subsidy.

On the other hand, up the road with the Quinault Tribe, similar geographic isolation was being met with efforts to build the economy from within. In addition to a tribally-owned resort, a flourishing fisheries business was providing employment as well as outside income to the community. But of particular note, the housing authority saw an opportunity to keep tribal funds in the community by creating a roofing business to serve the housing authority and other private homeowners on the reservation. Rather than paying for someone to drive out from miles away to do the work, a job training program was set up so that Quinault gained a workforce of skilled roofers and were able to save money for the tribe. These are new and wonderful ideas that will help sustain this tribe in the future.

While some tribes have been tremendously successful in economic and community development, this resourcefulness is often lacking on many American Indian reservations. It seems that, over the course of hundreds of years of dealing with Indian tribes, the federal government has created an unnatural scarcity of resources -- of land, of food, of cash payments, of all the things that make an economy function -- and replaced functioning economies with a system of government subsidy.

Under this scenario of unnatural scarcity, the idea of economic gain of the individual benefiting the community simply does not work; your gain can only come at your neighbor's expense. Success is therefore met with suspicion or even hostility. The government established isolated communities in which economics is a zero sum game. Many people unfairly criticize tribes for not being more successful in a market-based system when the government has in effect isolated them from that very system. I believe, and it seems this Committee agrees, that for both economic and moral reasons we must work with tribes to create economic opportunities based on market principles that allow for the creation of wealth, rather than fostering a reliance on federal assistance.

The challenges facing tribes are not due simply to the system of reservations and this is not an argument for either assimilation or a return to the termination policies of the mid-twentieth century. We must look to self-determination and embrace a functioning free-market system as the long-term solution to the challenges of tribal economies, not more subsidies. I am also not advocating an abandonment of support. The federal government created this problem and the federal government must now work with tribes and private institutions to help solve it by creating and supporting institutions of true, long-term economic value. The federal government has a dual responsibility to its citizens: to assist persons in poverty and to ensure that they can escape that poverty.

Our first goal must be to discontinue the policies that hinder economic growth on the reservation and in other Indian communities. A good example of this concerns the use of leases on trust-held land. Prior to the passage of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), most individual tribal members could get a lease for land for only 25 years. Yet some policy makers

scratched their heads and wondered why tribal members weren't getting 30-year mortgages. It's simple: no banker in their right mind is going to lend you money for 30 years if you get the land for 25. That has nothing to do with race or reservation, it's just basic business practice. Another example is a tribal member going to a lender to get a mortgage loan is approved pending title clearance on the land. Had the loan been for a home on fee land, the tribal member could expect to receive a Title Status Report (TSR) in a matter of days. With trust or allotted land, it can take many months to many years to obtain a TSR. How many lenders do you know that will hold a loan approval for a matter of years?

Land title issues continue to be a major concern on reservations and are often an impediment to development. Nevertheless, I believe the issue is a solvable problem that is too often used as an excuse for not pursuing further investment. The mere presence of leases does not prevent economic activity. The failure is in the administration of the leases, a matter that is under the jurisdiction of the Bureau of Indian Affairs and the Department of Interior. We are told that efforts are underway at the BIA to address this situation, but the problem was not created overnight and it will not be solved overnight. The House Financial Services Committee, in response to frustrations voiced by tribes, is working with NAIHC to develop legislation that would reinforce and more clearly define the ability for tribes to choose to take title processing in-house. Navajo intends to set up its own title plant in the next couple years.

The inability to create an effective lease registration and tracking system, one that would allow tribal members across the country to engage in the kind of trade and mortgage borrowing that most of the rest of us take for granted, is an example of how an inadequate legal infrastructure hampers economic development in Indian Country.

This is somewhere capital is sorely needed. Tribes are no longer willing to wait the months and years it often takes for the BIA to issue a Title Status Report. They want to create their own title plants, but that costs money. Ideally, a tribe contracting with the BIA to provide these services would receive funding as well as the responsibility, but with federal funds for BIA lagging, tribes must look elsewhere. The Confederated Salish and Kootenai Tribes of Montana, a self-governance tribe, has compacted with the BIA for title processing work and has set up its own title plant. They were able to obtain all the records they needed from the BIA, but they also inherited all of the backlog. The tribe has had to supply much of the funding needed to set up the title plant and keep it functioning. A lot of tribes do not have the extra funding to do that. The benefit to Salish-Kootenai is that now they are able to participate actively in the private mortgage market because they no longer have to wait for the BIA to process titles.

Should a diagnostic study of a tribe, of the sort proposed in S.519, show that a major impediment to development of a mortgage market is the inability to borrow money because of land issues, the recommendation could be for the corporation to fund a title plant. With a housing market that, by providing timely legal documentation, can attract lenders, the investment in a title plant would pay for itself many times over. In addition, tribes could join together to create a larger title plant as a consortium, spreading the cost out among the members.

Lease recordation is only one of the challenges that tribes face. Many businesses that have considered operating on a reservation have not done so because of concerns with legal infrastructure. In some cases their concerns are valid, in others they are not. Regardless, any businessman needs to know that they can get recompense if there is a contract dispute. We would all like the private sector to be more active in tribal development. From the vantage point of NAIHC, many in the private sector are ready to step up and in fact are trying very hard to craft programs and products that fit with Indian country, but they keep running up against BIA title delays, inconsistent legal documentation, or a complete lack of tribal legal infrastructure. For example, many tribes have not developed their own Uniform Commercial Codes, which are vital for working with lenders.

One of the staff at Navajo Housing Authority, Raymond Concho, Jr., is the former director of the housing program for the Pueblo of Acoma in New Mexico. Acoma, like many reservations, has a shortage of housing. Just five years ago the Tribe's governor was commuting 40 miles from Albuquerque to perform his duties. There was no chance for a tribal member – even one who clearly had a good job – to purchase a home. The mechanism to do so, the tribal codes that would allow for mortgage lending, simply did not exist.

Raymond set out to create a viable mortgage lending program at his tribe. After much work with lawyers, HUD, Fannie Mae, PMI Mortgage Insurance and others, he presented a set of proposed legal documents to his tribal council for approval.

While the council supported his proposal, they told him that he needed to have it approved by the Casique, the traditional leaders of the tribe. For thousands of years, the Casique, or Antelope Clan, have governed the tribe and have given approval to families who wished to build a house or move from one to another. Raymond's ideas were a radical departure from centuries of tradition. For the first time, the proposed legal documents he presented them would take away their authority and put it in the hands of bankers and other institutions. The Casique might grant you a lease, but a banker might seek to have you kicked out for not paying your mortgage.

Nevertheless, the Casique approved of the plan. They recognized that in order to continue the economic development that has begun at the tribe and to give an opportunity for their members to build wealth and move away from dependence on federal programs and funding, they had to cede some power. This is not a sign of weakness, this is a sign of immeasurable strength and belief in their own people.

The example of Acoma Pueblo is important for several reasons. First, it shows how challenging it can be to create viable legal infrastructures, those necessary for business and investment. Second it shows that tribes, while challenged with the need to advance economically, can do so without losing their cultural identity. This is an area that the diagnostic tool in S.519 would be of great assistance.

Many of my colleagues working on behalf of Indian tribes, both as members of tribes and as advocates for them, have proposed the creation of any number of separate institutions for economic growth, including the capital formation corporation proposed by this committee. But there are some challenges inherent in such a move that must be considered.

It is in diversification that our economy thrives. I can understand the value of having an Indian-owned bank. It can create and maintain relationships in communities that can facilitate interaction between potential consumers and the institution itself. Likewise creating an Indian Government-Sponsored Enterprise within this corporation to purchase loans from such banks could help step up mortgage activity, but should not be to the exclusion of others. Institutions like Fannie Mae connect Wall Street with lenders and in doing so create a mechanism whereby investment capital actually make loans more plentiful and affordable. We should find more ways to connect the tremendous capital resources of this country and of the global economy with Indian Country, and be cautious of looking to create new institutions if they will merely serve to perpetuate the economic isolation of too many tribal communities.

There are many examples of how we can assist in the development of infrastructure and work with sovereign governments to improve their economies. Many people discuss third world countries and make comparisons to tribal economies, but I think comparisons to Eastern Europe are more appropriate. The countries of the former Soviet Bloc had strong, but distant central control. Yet through foreign investment, decentralization and the development of effective economic and legal infrastructure, many of these countries are thriving. For many tribes, the tribal government is the center of the universe – the biggest employer and the conduit of all federal assistance. However, examples of decentralization in Eastern Europe have shown that investment in business associations and business training associations outside the central government are crucial to building economies.

Programs with a singular purpose following a narrow policy could be seen as a contributing factor in the failure of many programs designed to assist tribes. Successful models, like Public Law 93-638, provide assistance, but allow flexibility in implementation. Neither the developing countries of Eastern Europe nor the vastly different tribes in the United States should be subjected to a one-size-fits-all prescription for development. A Native-owned corporation must be open to innovative ideas and be as flexible as possible.

So how does housing fit in? We see this as an opportunity. With the new amendment to NAHASDA passed in 2002 with the help of this Committee, tribes are able to use the Title VI loan guarantee program to fund housing related community development activities and, pending the outcome of the community development project that is currently being explored by HUD, may in the future be able to leverage their NAHASDA funds for community development that is not strictly sticks and bricks but rather activities to grow wealth in the community. Tribes are in a position to begin to disengage from a singular path, prescribed for all, and attend to the needs and opportunities of their own situation.

Community development through private investment is key. For certain, a Native-owned corporation would allow tribes to purchase assets or businesses to support housing. We know that housing alone is not enough, as evidenced by my example of the Hoh tribe earlier. Investment in housing is a tremendous stimulus for American communities, but only when the opportunities and legal infrastructure exist. Simple housing alone just provides a roof. Housing development with a manufactured housing plant, with a roofing business like at Quinault, with a title plant, with even businesses like hardware stores or building supply stores stimulate the local economy. Additionally, home equity is one of the greatest builders of personal wealth. We must move from subsidized housing to homeownership to allow tribal members to grow personal wealth. The corporation would allow tribes to take the next step.

We have a vision for Navajo in 10 years and in 100 years. Many tribally-owned businesses are already in place that are leading to a more vibrant economy on our reservation. For example, Navajo has developed a self-insurance program that currently has \$13 million in reserve and the risk is only \$200,000 a year. We also have a cabinet company that not only provides cabinets for new housing through the housing authority, but also provides income to the tribe from sales outside the reservation. Our Flexcrete plant, which manufactures innovative building materials that will cut down on the cost of building and heating homes, is expected to generate \$28 million in 8 years. We are also looking into creating a mortgage company with a program that would provide 100% guarantee for home loans for families who are not otherwise eligible for financing and who must fulfill the homebuyer counseling requirement. Fannie Mae is supporting us in this effort. Additionally, we have a modular construction plant that utilizes volunteer labor to manufacture homes at reduced cost. These are all ventures that have required capital from the tribe and now are not only alleviating some of the severe need for housing on the reservation, but are also generating income and creating jobs. This corporation could allow other tribes the opportunity to set up similar businesses that support housing.

The Committee has asked for a discussion of systemic barriers to tribal development and places the corporation would be helpful. I will close today with a discussion of a few that add to those already mentioned.

While there are numerous national initiatives and programs already in place, tribal communities still have a need for lenders and other financial institutions to step up their mortgage loan activity. One way to attract lenders is to make financial services more readily available. How can a mortgage market or business market prosper when there is one bank branch in an area of several hundred square miles? Some tribal areas do not have any banking services whatsoever. Navajo currently has one bank branch and four ATM machines to service more than 180,000 tribal members. Additionally, much of the Native community is in need of homebuyer training, financial literacy skills or credit counseling. Without this training, some Native

homebuyers are left with little choice than to accept loans with high interest rates, excessive fees, and discriminatory or unscrupulous practices.

NAIHC also encourages the expansion of the use of Individual Development Accounts (IDA), for putting tribal members on the road to homeownership. Some Federal Home Loan Banks have set up IDAs where deposits from the family are matched by the bank in anticipation of a down-payment on a future mortgage. The matching funds create an incentive to save and give the family a stake in their own future. The corporation could offer this kind of service. IDAs are still a form of subsidy, but without it most will not take the risk and would rather continue to rely on tribal housing departments. IDAs make it easier to get into a home, but at the same time, not too easy. Tribes have the challenge of seeing so many families they want to put into a new home, but know they are not ready to be homeowners. IDAs can begin to bridge that gap.

In most cases Native families are either first generation mortgage loan recipients or first-time mortgage loan recipients. Tribal families often seek assistance to learn about homeownership, its benefits, and requirements because it is unfamiliar territory. In some instances, they may have less than good credit or no credit history at all, or they may not be familiar with the mortgage lending process and required home maintenance activities. Education and counseling is imperative in helping a Native American individual or family become a successful homeowner. The more sophisticated and knowledgeable our people get in the area of housing finance the more likely they are to be successful.

Large scale infrastructure is also an area desperately needing investment. For most Americans, the cost of basic infrastructure—like water, sewer and roads, is an expense shared by a local community, or paid for by county and state taxes. As you know, in Indian Country things are slightly different. Although tribes receive federal money for housing through the form of Native American Housing Block Grant funds and other programs, tribes are not able to build a home without putting infrastructure in place first. For most public housing programs, it is taken for granted that a water and sewer system already exists for the house to be hooked up to. For much of tribal development, that system must be built, and that is not cheap. Water treatment plants, sanitation facilities, roads, hospitals, fire departments – all of these are so easily taken for granted, but in Indian country are usually absent.

NAIHC issued a report on infrastructure in Indian Country in 2003. NAIHC's report revealed that a small percentage of tribal communities have no infrastructure in place, while in other areas, roads were described as "poor to fair" and sewer systems/facilities were described as "generally poor," negatively affecting not only housing, but also much-needed business development as well. With a large percent of the Native population in need of basic infrastructure, particularly as compared to businesses and schools in most of the United States, Native entrepreneurs are at a distinct disadvantage when it comes to successfully building or establishing a business.

One possible new initiative would be to create an incentive for tribes to cultivate private investment. Right now, most incentives are for the lender in the forms of guarantees or the ability to meet Community Reinvestment Act (CRA) requirements. Other than the desire to put their members in homes, there is no real incentive for tribes to do private lending. Perhaps there could be some monetary incentive to reward leveraging. For example, if a tribe combines its own funds with corporation funds, at some point they could get some of it back. The opposite currently exists for NAHASDA at HUD – you get more money because you have fewer resources. You are rewarded for having a depressed economy. There is not a solid incentive to improve that economy.

Many in this room may not immediately agree with this opinion, but I personally believe that, for business purposes, taking land out of trust and making it fee land will help tribes, not hurt them. For our Flexcrete plant, which manufactures building materials to be used both on and off the reservation, we could

have located on Navajo land, but what would happen if the business went under? Instead we bought 10 acres of fee land for the plant that can be sold if the business fails. This way we have our interests protected.

I believe that the number one challenge to economic progress for tribes is a lack of resources – not only monetary resources, but human resources. There is a severe shortage of people in Indian country who have business sense. Through no fault of their own, most of our people have what some call a “welfare mentality,” often perpetuated by federal policies. If the federal government provided more tools and education, taking the focus off subsidy, I believe you would see more economic growth in tribal communities. I therefore urge this Committee to maintain technical assistance and business training as a critical component for this legislation. In particular, I would like to see an internship program with the corporation to teach young Native Americans about business. I would also like to see a mentoring program set up for tribes to learn from private corporations.

Leveraging made possible under NAHASDA is a great opportunity that many tribes are taking advantage of, but it is still developing in Indian Country. Those who are positioned well to be successful are successful. But those with poor economies, a lack of jobs, or a poor location are not well positioned and will continue to struggle until their situation improves. A source of additional capital would give many tribes the boost they need.

Indian country stands out in its extreme level of need and warrants the investment of resources that can fund a more aggressive and comprehensive approach to solving its problems. With the federal government’s main Indian housing program, the Native American Housing Block Grant, only able to produce about 5,000 new units per year nationally, looking to new paradigms is the only way we as a people can hope to make progress.

CONCLUSION:

In closing, each individual tribe must decide for itself how to preserve its culture and strike a balance, as the Pueblo of Acoma has done, that allows development and economic integration, but maintains the tribe’s unique identity.

If we do not work with the tribes to provide opportunity, the drain of resources away from Indian communities will continue. I am not referring to an economic drain, but an intellectual one. Young people need opportunity. If they do not have economic opportunity in Indian Country, more of them will continue to leave and seek their fortunes elsewhere. This is a danger to cultural identity as great as any other. It is, however, one that we in this room and throughout government and the private sector can work to help tribes overcome.

I would again like to thank all the members of this subcommittee, in particular Chairman Campbell and Vice Chairman Inouye, for their continuing support for the Tribes and for Indian housing programs. NAIHC looks forward to working with each of you in the rest of this session of Congress and I am happy to answer any questions you may have.

The National American Indian Housing Council is a 501(c)(3) organization representing tribes and tribal housing organizations nationwide. It operates a national technical assistance and training program as well as the Native American Housing Resource Center in Washington, DC through an appropriation from the Congress administered by HUD. NAIHC’s offices are at 900 Second Street, NE, Suite 305, Washington, DC 20002; phone: (202) 789-1754, fax: (202) 789-1758; <http://www.naihc.net>.